

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
MINHYE PARK,

Plaintiff,

-against-

DAVID DENNIS KIM, M.D.,

Defendant.  
-----X

Index No.: 1:20-cv-02636

**ANSWER**

**TRIAL BY JURY  
DEMANDED**

Defendant DAVID DENNIS KIM, M.D., by his attorneys, HEIDELL, PITTONI,  
MURPHY & BACH, LLP, upon information and belief, answers the Complaint herein as  
follows:

**AS AND TO “PRELIMINARY STATEMENT”**

FIRST: Denies knowledge or information sufficient to form a belief as to the  
allegations contained in the paragraph of the complaint designated “1” except admits that at  
times not specifically referenced in the Complaint, Defendant provided treatment to Plaintiff in  
accordance with the standard of care and otherwise begs leave to refer all questions of law to the  
court and all questions of fact to the trier thereof.

**AS AND TO “JURISDICTION”**

SECOND: Denies knowledge or information sufficient to form a belief as to the  
allegations contained in the paragraphs of the complaint designated “2” and “3” and otherwise  
begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO “VENUE”**

THIRD: Denies knowledge or information sufficient to form a belief as to the  
allegations contained in the paragraph of the complaint designated “4” and otherwise begs leave  
to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO “JURY DEMAND”**

FOURTH: There are two paragraphs numbered “5” in the Complaint but in response to Plaintiff’s first paragraph “5,” the Answering Defendant respectfully demands trial by jury on any issue triable of right by a jury pursuant to Fed. R. Civ. P. 38(b).

**AS AND TO “THE PARTIES”**

FIFTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint in response to Plaintiff’s second paragraph “5” and paragraph “6” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO “GENERAL ALLEGATIONS”**

SIXTH: Denies the allegations contained in the paragraphs of the complaint designated “7,” “8,” “9,” “10,” and “11”, except admits that at certain times not specifically set forth in the Complaint, the Answering Defendant was and is a Board certified physician duly licensed to practice medicine in the State of New York whose office is located at 143-16 Sanford Avenue, Flushing, NY 11355 and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

SEVENTH: Denies the allegations contained in the paragraphs of the complaint designated “12,” “13,” “14,” and “15” except admits that at certain times not specifically set forth in the Complaint, the Answering Defendant rendered certain professional services to and for the Plaintiff in accordance with accepted standards of care and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

EIGHTH: Denies the allegations contained in the paragraphs of the complaint designated “16,” “17,” and “18”.

NINTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph of the complaint designated “19” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

TENTH: Denies the allegations contained in the paragraphs of the complaint designated “20,” “21,” and “22.”

ELEVENTH: The allegations in paragraphs “23” and “24” contain legal conclusions to which no answer is required and the defendant otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

#### **AS AND TO THE FIRST CAUSE OF ACTION**

TWELFTH: Answering the paragraph of the complaint designated “25,” the Answering Defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “24” with the same force and effect as if herein set forth at length.

THIRTEENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph of the complaint designated “26” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

FOURTEENTH: Denies the allegations contained in the paragraphs of the complaint designated “27,” “28,” and “29”.

#### **AS AND TO THE SECOND CAUSE OF ACTION**

FIFTEENTH: Answering the paragraph of the complaint designated “30,” the Answering Defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “29” with the same force and effect as if herein set forth at length.

SIXTEENTH: Denies the allegations contained in the paragraphs of the complaint designated “31,” “32,” and “33”.

**FOR A FIRST DEFENSE**

SEVENTEENTH: The court does not have jurisdiction over the defendant because defendant was not properly served with a copy of the summons and complaint due to insufficient process.

**FOR A SECOND DEFENSE**

EIGHTEENTH: The court does not have jurisdiction over the defendant because defendant was not properly served with a copy of the summons and complaint due to insufficient service of process.

**FOR A THIRD DEFENSE**

NINETEENTH: That this action was not commenced against defendant until after the expiration of the time period specified in the applicable statute of limitations and any recovery based on the alleged causes of action herein is barred.

**FOR A FOURTH DEFENSE**

TWENTIETH: That the equitable share of liability, if any, of defendant DAVID DENNIS KIM, M.D. shall be determined pursuant to the provisions of Article 16 of the CPLR.

**FOR A FIFTH DEFENSE**

TWENTY-FIRST: That one or more of the causes of action in the complaint fail to state a cause of action upon which relief may be granted.

**FOR A SIXTH DEFENSE**

TWENTY-SECOND: That this defendant reserves the right to amend his answers and/or affirmative defenses that may be determined applicable in the future by discovery in this matter.

**FOR A SEVENTH DEFENSE**

TWENTY-THIRD: Plaintiff has failed to mitigate her alleged damages claimed herein.

**FOR A EIGHTH DEFENSE**

TWENTY-FOURTH: This action is barred or defendant is entitled to a set-off against any award herein as plaintiffs have previously recovered sums for all or part of the damages claimed herein.

**FOR A NINTH DEFENSE**

TWENTY-FIFTH: The amount of alleged damages claimed by plaintiff should be reduced pursuant to CPLR §4545 to the extent of any collateral source benefits, remuneration or compensation received.

**FOR A TENTH DEFENSE**

TWENTY-SIXTH: That as to the cause of action in the Complaint alleging lack of informed consent, Defendant pleads the defenses in New York State Public Health Law § 2805-d.

**FOR AN ELEVENTH DEFENSE**

TWENTY-SEVENTH: That the Complaint was served in contravention of CPLR § 3012-a and is therefore a nullity.

**FOR A TWELFTH DEFENSE**

TWENTY-EIGHTH: That whatever damages may have been sustained at the time and place alleged in the complaint by plaintiff were caused, in whole or in part, by the culpable conduct of plaintiff and without any negligence on the part of defendant. Damages, if any, are to be diminished proportionally to the culpable conduct of the plaintiff.

**FOR A THIRTEENTH DEFENSE**

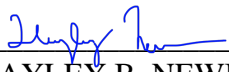
TWENTY-NINTH: That the Answering Defendant denies any and all allegations of plaintiff's complaint not specifically admitted herein.

WHEREFORE, defendant DAVID DENNIS KIM, M.D. demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: White Plains, New York  
October 22, 2020

Yours, etc.,

HEIDELL, PITTONI, MURPHY & BACH, LLP

By:  \_\_\_\_\_  
HAYLEY B. NEWMAN  
Attorneys for Defendant  
DAVID DENNIS KIM, M.D.  
99 Park Avenue, 7<sup>th</sup> Floor  
New York, New York 10016  
Tel.: (212) 286-8585  
Fax: (212) 490-8966  
Email: hnewman@hpmb.com

BY ECF

TO: Jae Lee, Esq.  
JSL LAW OFFICES, P.C.  
Attorneys for Plaintiff  
626 RXR Plaza  
Uniondale, NY 11556  
jae@lawjsl.com